



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 330 OF 2024
WITH
CRIMINAL APPLICATION NO. 3289 OF 2024
IN CRIMINAL APPEAL NO. 330 OF 2024

Vishal Dhondu Malekar

Age – 29 Years, Occ. - Labour,
R/o – Shelwad, Taluka Bodwad,
District Jalgaon.

... Appellant

Versus

1. The State of Maharashtra,
Through its Investigation Officer,
Bodwad, District Jalgaon.

2. X. Y. Z.

... Respondents

.....

Mr. Harshal P. Randhir, Advocate for the Appellant

Mr. P. P. Dawalkar, APP for Respondent-State

Mr. S. S. Palnitkar (through VC) h/f Ms. Falguni Kulkarni, Advocate
for Respondent No.2

.....

CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 23.03.2026

Pronounced on : 24.03.2026

JUDGMENT :

1. In this appeal by convict, there is challenge to the judgment and order dated 04.03.2024 passed by learned Additional Sessions Judge, Bhusawal in Sessions Case No. 182 of 2021.

FACTS IN BRIEF, GIVING RISE TO THE APPEAL

2. In brief, prosecution was launched on report by PW2 victim that one month prior to 06.10.2021, while she was passing through the lane, she happened to see accused sleeping with a lady on a cot together. Since then, accused started stalking victim. On 01.10.2021, finding her alone in the house, i.e. while her parents were in the field and brother had been for vaccination, accused caught her hand and forcibly took her to his house and hugged her and even confined her in his house. Seeing arrival of brother of victim, she was allowed to go. According to her, both, accused and said lady, had issued threats to her. Due to threats, she consumed insecticide and was admitted and treated in a hospital. Thereafter, when police approached her in hospital, she gave report Exhibit 19 resulting into registration of crime bearing No. 0239 of 2021 for offence under Sections 354, 354-A, 354-D, 327, 452, 342, 323, 504, 506 r/w 34 of IPC and under Sections 7, 8, 11, 12, 16 and 17 of Protection of Children from Sexual Offences Act, 2012 (POCSO Act).

3. PW8 registered the F.I.R. which was investigated by PW7 and after gathering sufficient evidence, accused Vishal was chargesheeted and tried by learned Additional Sessions Judge, Bhusawal and he

came to be convicted for offence under Section 354 of IPC, but was acquitted from rest of the charges. Being aggrieved by the same, present appeal has been preferred.

SUBMISSIONS

On behalf of the Appellant :

4. Learned counsel for appellant would point out that there is false implication. That, in fact, victim was in love with accused-appellant. A love letter to that extent is placed on record. That, merely getting annoyed by seeing accused in company of another lady, she initially consumed poison and then later on, lodged false complaint accusing appellant for catching hold of her hand and hugging her in his house. But, according to learned counsel, there are several material contradictions in her testimony and the contents of F.I.R. as well as her statement under Section 164 of Cr.P.C. wherein distinct narrations are quoted by victim rendering her statement unworthy of credence and reliance.

5. He further submitted that, even there is no recovery of container of the pesticide, contents of which were allegedly consumed by the victim. He further pointed out that there is no independent corroborative piece of evidence. That, even when complainant has

admitted that she resides in a thickly populated locality and when admittedly the house of accused, in which the incidence took place, is opposite to a public water tank which is frequented by villagers, but surprisingly no independent witness has been examined by prosecution. Learned counsel took this court through the material omissions which are brought in her cross and for above reasons, he questions the creditworthiness of victim's sole testimony and thereby also questions the judgment and order of conviction and prays to acquit the accused when, according to him, on same set of evidence accused has been acquitted from rest of the charges.

6. Learned counsel for the appellant placed reliance on the decision of Hon'ble Apex Court in the case of ***Mohd. Ali alias Guddu v. State of Uttar Pradesh*** (2015) 7 SCC 272 and judgment of the Division Bench of this Court in ***Sanjay s/o Rangnath Haware v The State of Maharashtra and another*** [Criminal Appeal No. 424 of 2020 decided on 14.12.2024].

On behalf of the State as well as victim :

7. Learned APP as well as learned counsel appointed for victim, both have supported the judgment to be perfectly legal, valid and well reasoned one and according to them, the same needs no interference.

BRIEF ACCOUNT OF THE EVIDENCE IN TRIAL COURT

8. Prosecution seems to have examined in all eight witnesses to establish its case. Status of the said witnesses can be stated as under :

Status of witnesses :

PW1 is pancha to spot panchanama.

PW2 victim.

PW3 pancha to spot panchanama near water tank.

PW4 brother of victim.

PW5 official of Grampanchayat on the point of date of birth of victim.

PW6 medical expert who treated victim

PW7 Investigating Officer

PW8 PSO who noted FIR.

Amongst above eight witnesses, crucial evidence is of PW2 victim and followed by that of her brother. Accordingly same is put to scrutiny.

9. PW2 victim, who gave her age as 16 years and to be studying in school at Shelwad, deposed about knowing accused as well as one Yogita. According to her, one month prior to 06.10.2021, while she

was passing over the house of accused, she happened to see accused sleeping with above named lady on a cot. Further, according to her, since thereafter, accused started following her. On 01.10.2021, while she was alone in the house, accysed came, pulled her by her hand and took her to his house in spite of her resistance. Further, according to her, accused hugged her in his house and at that time, the other lady was present. Accused threatened her not to disclose to anyone about seeing him and the lady together on the cot, and he slapped her and even gave fist blow, whereas the lady threatened that if she informs anyone, she would not be allowed to live. Accused said that he could have physical relations with her by which she would be defamed. Then, according to her, she was confined in the house by closing the door from outside. Seeing her brother, accused opened the door and she managed to rush home and thereafter she consumed insecticide and while taking treatment in the hospital, police recorded her statement which is at Exhibit 19. She gave her date of birth as 28.12.2006 and she also identified birth certificate and its contents to be correct.

Initial cross of the victim is on the surroundings of the spot house. She denied that, there was rush of people in the lane and she denied having mobile. In para 4, omissions are brought about accused

giving her evil look; about accused confining her in the house by shutting the door; about accused opening the door on seeing her brother, she pushing accused and going out and due to the threat of accused she consuming insecticide. Rest is all denial.

10. PW4 brother, in his evidence at Exhibit 26, stated that on 01.10.2021 when his parents were in the field, and when he had been for vaccination, his sister was alone at home and when he returned at 03.00 p.m., he did not find his sister in the house. After a while when he returned, he found the door closed from inside and he gave call to his sister, who opened the door but in semi conscious state. He informed his parents and took his sister to Civil Hospital. According to him, in the hospital, his sister told that as she had seen accused and the lady together, on that count, they both were harassing her and therefore she consumed pesticide.

While under cross, he admitted that container was not handed over to police and even police did not ask him for the bottle. He gave names of the neighbours. He admitted that, on the day of incident, there was death anniversary in the house of Chaudhari, a neighbour, and many people had came there for lunch. Rest is all denial.

11. On the point of age, prosecution seems to have examined PW5 who was in service of Grampanchayat as a Gramsevak and he carried register of birth and placed on record its extract Exhibit 32.

While under cross, he answered that, he has not inquired about application of victim's parents for registration of birth of their daughter. He admitted that contents of Exhibit 34 are not noted by him.

12. Rest of the witnesses are medical expert and investigating officer. However, PW6 medical expert is on the point of admission, treatment and discharge of PW2 victim after being treated for consumption of pesticide.

ANALYSIS AND CONCLUSION

13. Learned trial court has already acquitted present accused from charges under Sections 327, 354-A, 354-D, 342 of IPC and Sections 8 and 12 of POCSO Act, except Section 354 of IPC. State has not filed any appeal, nor there is distinct appeal by complainant and therefore, this court is only called upon to ascertain whether learned trial Judge

was justified in convicting accused for offence under Section 354 of IPC.

14. In the light of nature of charge and accusations, crucial evidence is of PW2 victim. Her testimony is already reproduced above. She has categorically stated that, on relevant day, i.e. 01.10.2021 accused entered her house and while she was alone, pulled her towards his house after catching her hand and there, he allegedly hugged her in presence of another lady, namely, Yogita. He threatened her to not to disclose to anyone about seeing him and said lady together in the house on a cot and he also allegedly threatened to have physical relations with her and then to defame her. Life threats are attributed to the lady, but she is not an accused here.

15. Though victim is subjected to cross, the above deposition of catching hold of her hand, taking her to the house and then hugging her, has remained intact. She has not only narrated about it in the complaint, but has also reiterated it in her statement under Section 164 of Cr.P.C. before the Magistrate. There is consistency on the act of accused and though there are variances in the testimony of victim on the point of closing the door from outside or inside, and removing her silver ring on a distinct day, of which there is narration by way of

supplementary statement, the same are not material. Occurrence of 01.10.2021 reproduced above has not been rendered doubtful.

16. Learned counsel for appellant would point out that victim had love relations with accused and she had written love letter to him. However, this is not subject matter of the allegations. Here, there are charges for outraging modesty of the girl, i.e. by initially catching hold of her hand, then pulling her and embarrassing her. Therefore, when her testimony to such extent has remained undisturbed, this Court does not find any error on the part of trial court in recording conviction for above charge.

17. Learned counsel has placed on record judgment of the Hon'ble Apex Court in the case of ***Mohd. Ali alias Guddu*** (supra) and placed specific reliance on the observations of the Hon'ble Apex Court in paragraphs 29 and 30. However, facts in the cases relied by learned counsel for the appellant are distinct and therefore cannot be taken recourse to.

18. Here, testimony of victim on the point of outraging her modesty are indeed inspiring confidence and therefore her said sole testimony can definitely be relied and acted upon. Hence, there being no merit in the appeal, following order is passed :

ORDER

- I. The Criminal Appeal is hereby dismissed.
- II. Pending Criminal Application also stands disposed off.
- III. Fees of the counsel appointed to represent respondent no.2 be paid by the High Court Legal Services Sub-Committee, Aurangabad, as per Rules.

[ABHAY S. WAGHWASE, J.]

vre